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July 17, 2002
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 19, 2001

Case Number: VSO-0486

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) for continued access authorization */ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by one of the Department of Energy's (DOE) Operations Offices. Based on the record before me, I have determined that the individual's access authorization should not be restored.

I. Background

The individual is employed at a DOE facility where her work requires her to have an access authorization. The local DOE security office issued a Notification Letter to the individual on February 25, 2002. The Notification Letter alleges under 10 C.F.R. § 710.8(l) that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that she is not honest, reliable, or trustworthy, or which furnishes reason to believe that she may be subject to pressure, coercion, exploitation, or duress which may cause her to act contrary to the best interest of the national security."

The security concerns in the Notification Letter are based on the following factual allegations: The individual and her spouse have had significant financial difficulties that have led them to file for Chapter 7 bankruptcy. The Chapter 7 bankruptcy Summary of Schedules indicates that at the point of filing the individual and her spouse had total assets valued at \$297,520 and total liabilities of \$332,410. The Notification Letter also charged that on January 3, 1999, the individual was arrested for Domestic Aggravated Assault and Domestic Battery.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns in the Notification Letter. DOE transmitted

*/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case.

At the hearing that I convened, the DOE Counsel called two witnesses, the individual's supervisor and the individual. The individual, who was not represented by counsel, testified on her own behalf, and called her supervisor as well as five other character witnesses. The DOE submitted 21 written exhibits prior to the hearing, and the individual submitted seven exhibits.

II. Standard of Review

The applicable DOE regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct. These factors are set out in § 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding his conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of participation; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence.

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is "for the purpose of affording the individual an opportunity of supporting [her] eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince the DOE that restoring her access authorization "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 24 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. For the reasons discussed below, I do not recommend granting this individual's access authorization.

III. Findings of Fact

The individual admits the allegations in the Notification Letter. During the hearing, the individual presented evidence in an attempt to mitigate the security concerns in the Notification Letter, and this Decision will focus primarily on whether the individual met her burden of showing that restoring her access authorization is warranted under 10 C.F.R. Part 710. I will begin with a description of the

events that gave rise to the security concerns to provide a context in which to consider the evidence of mitigation.

In 2000, the individual informed the DOE that she and her husband had filed a Chapter 7 Bankruptcy Petition. This revelation prompted the DOE to conduct an interview with the individual to discuss the financial circumstances that led to the joint bankruptcy filing. DOE Exhibit 5. During a Personnel Security Interview conducted by the DOE on March 21, 2001, the individual related that she attributed her financial problems to making purchases without balancing her checkbook, living beyond her family's means, and "stupidity." DOE Exhibit 1. The individual also related that her spouse persuaded her to make many purchases about which she was apprehensive. *Id.* This included taking leave without pay to go on a vacation to Europe. While on this trip, the family's car was repossessed. Further, the individual stated that she purchased a new car for herself every year for the past eleven years. She noted that most of her car purchases occurred because she "always wanted to have the latest and greatest." *Id.*

According to the bankruptcy court records, the individual and her spouse declared assets in the amount of \$297,520 and liabilities in the amount of \$332,410 at the time she and her husband filed the bankruptcy petition in 2000. At the hearing, the individual presented evidence indicating that the bankruptcy proceeding had been completed and their debts had been discharged. Exhibit B. The individual also stated that the family house was sold. The proceeds of the sale of the house were used to pay off most of the debt incurred before the bankruptcy. At the time of the hearing, the individual and her husband were separated and not yet divorced. However, she indicated that a divorce would be finalized within the next couple of months. Hearing Transcript (Tr.) at 16.

With respect to the DOE's concern based on the individual's arrest, the individual acknowledged that she was arrested for Domestic Aggravated Assault and Domestic Battery on January 3, 1999. Evidence in the record indicates that on January 3, 1999, the individual and her husband were engaged in a verbal dispute. At some point, the individual alleges that her husband pushed her up against a wall and held her by the neck. Tr. at 37. After feeling provoked, the individual asserts that she then pulled out a knife and held it at him while she insisted that her husband leave the house. However, the record indicates that she never pursued nor struck her husband with the knife. Her husband eventually left the house and subsequently reported the incident to the local police. The individual was later arrested.

IV. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

A. Whether the Individual's Financial Difficulties and Arrest Constitute Security Concerns

When a person files for bankruptcy, a security concern arises not from the bankruptcy filing *per se*, but rather from the circumstances surrounding the individual's bankruptcy and her attendant financial problems. *See Personnel Security Hearing* (Case No. VSO-0414), 28 DOE ¶ 82,794 (2001), *aff'd*, 28 DOE ¶ 83,025 (2001) (affirmed by OSA, 2001). When reviewing the access authorization of a person who has filed for bankruptcy relief, I must focus on how the individual reached the point at which it became necessary for her to seek the help of the bankruptcy court in order to regain control of her financial situation through the legal discharge of her debts. *See Personnel Security Hearing* (Case No. VSO-0288), 27 DOE ¶ 82,826 (1999), *aff'd* 28 DOE ¶ 83,004 (2000) (affirmed by OSA, 2000). In this regard, I must consider whether legitimate financial hardship necessitated the bankruptcy filing or whether the bankruptcy resulted from the security clearance holder's irresponsible behavior.

The facts in the present case clearly indicate that the individual has shown a pattern of irresponsible financial behavior that led to her bankruptcy filing. The individual's conduct regarding her financial affairs is marked by the purchase of numerous new vehicles and other items which caused the family to live beyond their means. In addition, the individual spent money to take a trip to Europe when they could have made payments on a car that was repossessed during their vacation.

Because it appears that many of the expenses incurred by the individual prior to her bankruptcy filing were discretionary, I find that the DOE correctly invoked Criterion L when it suspended the individual's security clearance. The individual's conduct raises questions whether the individual may be subject to pressure, coercion, exploitation or duress since she seeks to maintain a lifestyle that cannot be supported by her family's income level. A finding that derogatory information exists, however, does not end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing* (Case No. VSO-0244), 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing* (Case No. VSO-0154), 26 DOE ¶ 82,794 (1997), *aff'd*, 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998).

Likewise, I find that the DOE correctly invoked Criterion L with respect to the individual's 1999 arrest for Domestic Aggravated Assault and Domestic Battery. The individual's behavior implicates important security concerns. Criminal acts are indeed listed as an example of derogatory information under Criterion L. *See* 10 C.F.R. § 710.8(l).

B. Whether Mitigating Circumstances Justify the Restoration of the Individual's Access Authorization

In mitigation of her financial problems described above, the individual asserts that she has reformed her behavior and is no longer acting in a financially irresponsible manner. She blames her poor financial situation, at least in part, on her husband's control of the mail and their checkbook. She testified that her husband obtained the mail and "kept it in his car, so I never saw the mail." Tr. at 17. According to the individual, "he [her husband] also kept the checkbook, and I really didn't know what our financial history looked like at that time." *Id.* The individual also testified that "basically

I took his word for it.” *Id.* The individual further revealed that she had to respond to phone calls from creditors after she realized her husband was not responding to the calls at home. Tr. at 18. She stated that “he [her husband] normally checked the calls at home also, if I got them I would ask him, have you taken care of this [call from creditor], and his reply would be ‘yes, I have’.” *Id.* The individual testified that when her husband lost his PSAP and was placed on administrative leave in 2000, he lost his shift differential, which equated to about \$10,000 a year loss in salary. Tr. at 17. According to the individual this is when she “started to feel the strain of the financial difficulties.” *Id.* The individual’s financial difficulties culminated in the initiation of a bankruptcy proceeding and the discharge of the family’s debts. Ex. B.

Since the bankruptcy, the individual asserts that she has taken several positive steps to meet her financial obligations. During the hearing, the individual testified as follows:

I moved out of the house, took care of my own life. I went to a new bank, started my whole life over, basically. I am taking care of my own checkbook now, no bounced checks, very proud of that. I see a good financial future for myself, because I’m reading books on finances. I keep a budget, which is something that I submitted to you - I submitted my budget to you of what I could afford and what I couldn’t afford . . . I’ve been renting a condo, but I’ll be moving into a house. And what I did, was two scenarios. I did what I could afford and what I’m actually going to be paying. And what I’m actually going to be paying \$975 per month, versus what I proposed at \$1100 per month.

Tr. at 23-24.

During the hearing, the individual introduced evidence to show that she is paying her bills in a timely fashion, including her rent, and is maintaining a positive balance in her checking account. *See Exhibits D, G and H.* She further asserts that she adheres to a monthly budget, has consulted with an accountant to assist her in the payment of her bills, and has received credit counseling. Ex. D. Overall, the individual asserts that she has been on her own for seven months and has not defaulted on any of her payments since the bankruptcy and since her separation from her husband. Tr. at 25.

As for the individual’s current vehicle situation, the individual indicated that she is currently driving a 2001 used vehicle which she proudly financed on her own. She further indicated that she will not be driving new vehicles anymore, since she can’t afford it. In addition, she stated that she has many regrets regarding her vacation to Europe in light of her financial situation. Tr. at 33. However, she testified that she and her husband had purchased the tickets to Europe prior to her husband being placed on leave without pay. *Id.* She explained that the trip was not an extravagant one and that she resided at a friend’s house while in Europe. Finally, the individual testified that if she had stayed home, she would have forfeited a \$1,500 plane ticket. *Id.*

The individual’s co-workers and friends testified that the individual is a changed person since her separation from her husband and believed she has made positive steps toward securing herself financially. Tr. at 68. A couple of the individual’s character witnesses attributed the individual’s

financial problems to her husband. Tr. at 68, 80. One of the individual's character witnesses testified that he has previously worked for a consumer credit counseling service. Tr. at 91. According to this witness, "I was pleasantly surprised to find out that [the individual] had gone through bankruptcy, and she had gone through consumer credit counseling. And my understanding, she is still doing that today. She understands she made a mistake and she wants to try to make it correct." Tr. at 92.

As for the individual's arrest for Domestic Aggravated Assault and Domestic Battery, the individual states that soon after the arrest, she and her husband sought and were granted a dismissal of the mutual restraining orders because they wished to reconcile at the time. Ex. F. She asserts that she attended joint counseling with her husband as well as anger management counseling for herself. After the incident, which she promptly reported to the DOE, the individual underwent several evaluations through the DOE Employee Assistance Program. Tr. at 38. She testified that she was placed on Prozac in 1999 for depression and has been doing fine since. *Id.* In addition, the individual was referred to a DOE consultant psychiatrist to assess whether or not her judgment and reliability were in question. Tr. at 40. The DOE consultant psychiatrist did not find any reason that the individual's arrest should be of concern for DOE. *Id.*

After considering the record before me, I believe that, despite the individual's assertions, there is still too great a risk that the individual could return to her pattern of financial irresponsibility. Previous opinions issued by OHA Hearing Officers have held that once there is a pattern of financial irresponsibility, the individual must demonstrate a sustained, new pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely. *Personnel Security Hearing* (Case No. VSO-0108), 26 DOE ¶ 82,764 at 85,699 (1996) (affirmed by OSA, 1997). Even though this individual may be succeeding in living within the law and limitations of her personal financial resources, such a short time has passed since she got into serious financial trouble that the individual has not yet convinced me she has established a new pattern and can be trusted. At the time of the hearing, it had only been seven months since the individual and her husband have been separated and the individual has been handling her financial affairs on her own. In view of the individual's financial history, more time needs to elapse before I could make a predictive assessment that the individual will remain financially responsible in the future. Despite the individual's very encouraging efforts to reform her financial behavior, I cannot recommend that her clearance be restored at this time.

As for the arrest, I am convinced that the individual has sufficiently mitigated DOE's security concern. This event appears to have been an isolated occurrence for which the individual has taken the necessary steps to ensure that it does not occur again. She is now separated from her husband, is taking medication to control her depression and has received anger management counseling. During the hearing, she appeared to be remorseful for her actions. Moreover, a DOE consultant psychiatrist did not find that the individual's future judgment and reliability would be affected by this event.

III. Conclusion

For the reasons set forth above, I find that there is sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L as to the individual's access authorization. I find further that the individual has failed to bring forth sufficient evidence to mitigate the DOE's security concerns concerning her financial difficulties. Accordingly, after considering all the relevant information, favorable and unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not yet demonstrated that restoring her access authorization would not endanger the common defense and would be clearly consistent with the national interest. I therefore find that the individual's access authorization should not be restored.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: July 17, 2002